

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

DIGITALDESK, INC. AND R. GREG
GOMM,

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Plaintiff(s),

§ Civil Action No. 5:23-CV-00886-JKP

BEXAR COUNTY, TEXAS AND
LIFTFUND INC.

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Defendant(s).

**DEFENDANTS BEXAR COUNTY, TEXAS' AND LIFTFUND INC.'S RESPONSE TO
PLAINTIFFS' OPPOSED MOTION TO LIFT STAY AND OPEN DISCOVERY FOR
LIMITED PURPOSE**

Defendants Bexar County, Texas and LiftFund Inc., by and through their respective undersigned counsel, submit this Response to Plaintiffs' Opposed Motion to Lift Stay and Open Discovery for Limited Purpose (the “Motion”), and would show this Court as follows:

On Friday, December 8, 2023, Plaintiffs moved to lift a stay that this Court had entered only three days earlier. The stay was entered after a conference with the Court, and counsel for all parties had the opportunity to oppose the stay. At that time, all parties were in agreement that discovery might not be necessary—and even potentially a wasted effort—given that Defendants are challenging the Court’s federal subject-matter jurisdiction. Nothing has changed since that court conference to justify disturbing the Court’s order staying the case. Plaintiffs’ Motion should therefore be denied.

Unless the Court decides that it needs additional facts to decide Defendants' Motion to Dismiss, conducting discovery now would amount to a guessing game about what facts the Court

might be interested in. Defendants have stated that they do not believe such additional factfinding is necessary. But at the very least, the parties should wait to conduct any discovery until the Court decides it is necessary and has the opportunity to give guidance to the parties regarding the scope of any discovery. Otherwise, the parties might spend significant resources discovering facts that turn out not to be germane to Defendants' Motion to Dismiss.

Defendants' Motion to Dismiss is premised on the contention that the Court lacks subject-matter jurisdiction over this case. As the Court has noted, “[a] federal court ‘must presume that a suit lies outside [its] limited jurisdiction, and the burden of establishing federal jurisdiction rests on the party seeking the federal forum.’” *Williams v. Hegar*, No. SA-22-cv-256, 2022 WL 2873464, at *2 (W.D. Tex. July 21, 2022) (quoting *Howery v. Allstate Ins. Co.*, 243 F.3d 912, 916 (5th Cir. 2001)). If the Court ends up agreeing with Defendants, then the Court, by extension, also lacks jurisdiction to preside over discovery and enforce the parties' obligations under the Federal Rules of Civil Procedure. It would thus be improper to order discovery before Plaintiffs have met their burden, or at least before the Court determines discovery is necessary to confirm that it has jurisdiction.

As the parties stated in their Joint 26(f) Report: “If the motion to dismiss is not ruled on based on the evidence submitted, then discovery focused on the jurisdictional issue of standing may be needed.” (Doc. 22 at 2.) Defendants remain committed to this approach, and if the Court decides that further factual development is necessary to decide the pending motion, Defendants will work with Plaintiffs on the scope of discovery appropriate to resolve those issues.

For the same reasons, Defendants oppose Plaintiffs' request for supplemental briefing on Defendants' Motion to Dismiss. (See Doc. 26 at 3.) All parties were given a full and fair opportunity to brief the issues each thought weighed in favor of their respective positions.

Supplemental briefing has not been requested by the Court and there is no indication the Court would find such briefing helpful. Absent some direction from the Court on what issues, if any, need further development, it would be inappropriate to allow further briefing on the Motion to Dismiss.

For the foregoing reasons, Defendants respectfully request that the Court deny Plaintiffs' Motion and maintain the administrative stay of this case pending further order of the Court on the Defendants' Motion to Dismiss.

Dated: December 15, 2023

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/s/ Daniel McNeel Lane, Jr.

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CERTIFICATE OF SERVICE

On December 15, 2023, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Western District of Texas, using the electronic case filing system of the court, which will effect service of the foregoing on the following via the CM/ECF system:

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